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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,385	07/18/2003	Donald E. Weder	8403.937	4634
30589	7590	03/29/2005	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			PALO, FRANCIS T	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,385

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7-9, 11-13 and 15 are rejected under 35 U.S.C. 103(a),
as being unpatentable over Charbonneau (US D259,333)1981,
in view of Landau (US 5,235,782).

Regarding **claim-1**:

Charbonneau depicts a plant package comprising contrasting color and a plurality of horizontal perforations, Charbonneau does not depict non-linear perforations and a closed bottom is not readily apparent from the figures, nor is a pot containing a floral grouping depicted within the package, as cited in the instant claim.

Landau teaches a plant package and is relied upon specifically for the teachings of a closed bottom package having a floral grouping contained therein, and non-linear perforations as a detaching element.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the package of Charbonneau as taught by Landau, to include a closed bottom for the known advantages of that feature, to further include a potted floral grouping as inherent to the utility of the package and to substitute non-linear perforations as functional and decorative equivalent detachable elements.

Charbonneau as depicted and as modified, is readable as having a dimensioned lower portion and an upper sleeve portion as cited; furthermore, the detachment of the Charbonneau package at the lowermost perforations would leave a lower portion having less outer surface area than the detached upper portion and a non-linear outer perimeter as cited.

Regarding independent claim-5:

The discussion above regarding claim-1 is relied upon.

The package of Charbonneau as depicted and as modified, is further readable as having a skirt portion (that portion between the two modified detaching elements) with an upper detachable portion extending from the skirt portion.

Charbonneau as depicted and as modified, does not read on the detached upper portion having as having a greater surface area than the remaining base and skirt portion.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have further modified the package of Charbonneau by relocating the uppermost detaching element so as to result in the upper detached portion having more surface area than the remaining base and skirt portion, as it has been held that rearranging parts of an invention involves only routine skill in the art.

Regarding **independent claim-9**:

The discussions above regarding claims 1 and 5 are relied upon.

The plant package of the instant claim is considered to be a rewording of independent claim-5; the discussion above regarding claim-5 is therefore considered applicable to the instant claim.

Regarding **independent claims 13 and 15**:

The discussions above regarding claims 1 and 5 are relied upon.

The instant claims reciting angularly arranged and curved detaching elements are considered rewordings of independent claim-5, the discussion above regarding claim-5 is therefore considered applicable to the instant claims.

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Regarding **claims 3, 7 and 11**:

The discussions above regarding the independent claims are relied upon.

Charbonneau depicts a tapered plant package as cited.

Regarding **claims 4, 8 and 12**:

The discussions above regarding the independent claims are relied upon.

Charbonneau depicts a plant package readable as having an upper portion sized to substantially enclose a floral grouping, also considered an inherent function of the shipping package.

Claims 2, 6, 10, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charbonneau and Landau as applied to claims 1, 5, 9, 13 and 15 above, and further in view of Witte (US 4,333,267) 1982.

Regarding **claims 2, 6, 10, 14 and 16**:

Charbonneau does not depict a bonding material as cited.

Witte teaches a bonding material disposed on an upper portion of a plant package to form a substantially closed end as cited (see Figures 1, 3 and 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have further modified the package of Charbonneau by including a

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bonding material as cited, and as taught by Witte, for the known advantages of that feature.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Greyvenstein teaches non-linear peripheral edges in sleeves.

De Klerk teaches non-linear detaching elements in a plant package.

Landau '775 teaches a plant package of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595 (571-272-6907 after 4/4/05).

The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo

Francis T. Palo
Examiner
Art Unit 3644